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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,459

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Mark J. Levine

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EXAMINER

PIZIALI, ANDREW T

ART UNIT

PAPER NUMBER

1786

MAIL DATE

DELIVERY MODE

09/29/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/730,459	Applicant(s) LEVINE ET AL.	
	Examiner Andrew T. Piziali	Art Unit 1786	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,2,4,6-8,13,23,25-27 and 31-36.
 Claim(s) withdrawn from consideration: 3,5,9-12,24,28 and 29.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Andrew T Piziali/
 Primary Examiner, Art Unit 1786

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.

Regarding the 35 U.S.C. 112 first paragraph rejection of claims 34 and 36, the applicant asserts that it is known in the art to use the claimed pressure and that the current specification references a patent (USPN 6,163,943) that references another patent (CA 841,938) that discloses that it is known in the art to use the claimed pressure. Applicant's argument is not persuasive because although it may have been a known option to use the claimed pressure of at least 200 psi, there is no evidence that the liquid jetted from the claimed invention was at a pressure of at least 200 psi.

Regarding the 35 U.S.C. 112 second paragraph rejection of claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36, the applicant asserts that the claims are definite because it is known in the art to use a pressure of 200 to 3000 psi and a total energy of 0.10 to 2.0 hp-hr/lb. Applicant's argument is not persuasive because although it may have been known to use a specific pressure and a specific total energy and a specific time, said features are not recited in the rejected claims.

Regarding the 35 U.S.C. 112 second paragraph rejection of claims 33 and 35, the applicant asserts that the claims are definite to one skilled in the art. The examiner respectfully disagrees. The Markush members compare scenarios wherein flat filaments are present to scenarios wherein flat filaments are not present. The claims are indefinite because it is not clear if all other variables are the same between the two scenarios. For example, materials, structure, element size, and/or density.

Regarding Noelle, the applicant asserts that the fabric is not a "support fabric" because it does not support a fabric as disclosed in the current specification. Applicant's argument is not persuasive because 1) limitations from the specification are not read into the claims and 2) a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since Noelle clearly discloses that the fabric withstands liquid jetted from a hydroentangling apparatus and that the fabric is in a continuous loop or made endless, it is inherently capable of being used as claimed.

Regarding Gaisser, the applicant asserts that Gaisser fails to teach or suggest the claimed fabric because the fabric is not in the location currently claimed (in a hydroentangling apparatus). Applicant's argument is not persuasive because a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding Zlatkus, the applicant asserts that Zlatkus fails to teach or suggest the claimed fabric because although the filaments are flat (compared to a knuckle shape), the filaments do not have a flat cross-sectional shape. Applicant's argument is not persuasive because it is noted that the feature upon which applicant relies (i.e. filaments have a flat cross-sectional shape) is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding Gaisser in view of Strandqvist, the applicant asserts that there is no motivation to use the fabric in a hydroentangling apparatus. The examiner respectfully disagrees. Gaisser discloses using the support fabric in a papermaking apparatus (column 1, lines 11-25), but Gaisser does not mention using the support fabric in a hydroentangling apparatus. Strandqvist discloses that it is known in the hydroentangling apparatus art to use a support fabric from a papermaking apparatus (see entire document including page 4, lines 7-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the support fabric of Gaisser in a hydroentangling apparatus, motivated by a desire to construct a functioning hydroentangling apparatus.

The applicant asserts that Gaisser teaches away from the combination because Gaisser discloses that some prior art press felts are inadequate for use as a dryer felt. Applicant's argument is not persuasive because the current rejection does not teach or suggest using a press felt as a dryer felt. Rather, the current rejection teaches that it would have been obvious to use the felt of Gaisser as a support fabric in a hydroentangling apparatus.

Regarding Strandqvist in view of Lewis, the applicant asserts that Lewis fails to teach or suggest flat filaments. The examiner respectfully disagrees. Lewis discloses that the invention pertains to fibers with a rectangular cross-section (column 1, lines 5-8).

Regarding Greenway in view of Noelle, Zlatkus, or Fagerholm, the applicant asserts that there is no motivation to combine the references. The examiner respectfully disagrees. Greenway is silent with regards to the use of flat filaments, but Noelle discloses that it is known in the hydroentangling support fabric art to use flat filaments to obtain the desired nonwoven appearance (see entire document including [0038], [0092] and [0093]), Zlatkus discloses that it is known in the hydroentangling support fabric art to use flat filaments to assist in producing different textures or patterns as desirable for the intended application (see entire document including column 2, lines 32-52, column 3, lines 21-29, and the Examples), and Fagerholm discloses that it is known in the belt art (column 1, lines 5-16) to use a support fabric comprising flat filaments to decrease support fabric thickness and/or increase wear potential (see Background Art section column 1, line 19 through column 2, line 58). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the round filaments of Greenway with the flat filaments taught by the prior art, motivated by a desire to control texture or pattern, decrease thickness, and/or increase wear potential and because it is within the general skill of a worker in the art to select a known filament shape on the basis of its suitability and desired characteristics.

Regarding Elsener in view of Schwartz or Whight, the applicant asserts that the support fabric taught by the applied prior art could not withstand pressures of between 200 and 2000 psi. Applicant's argument is not persuasive. Firstly, with the exception of claims 34 and 36, the feature upon which applicant relies is not recited in the rejected claims. Secondly, the limitations of claims 34 and 36 are new matter. Thirdly, a liquid jet exposure time is not specified in any claim and therefore all of the claims are indefinite as explained above. Fourthly, the applicant fails to provide sufficient evidence that the fabric cannot withstand the claimed pressure.